

From: [Dan Chiorean](#)
To: [Glynn, Katie](#)
Cc: [Blad, Leiv](#); [Jaramillo, Zarema](#); "[Daniel Litvin \(dlitvin@garwingerstein.com\)](#)"; "[van der Meulen, Robin](#)"; "[Deborah Elman](#)"; [Chris Letter](#); "[Kristyn Fields](#)"; "[David Raphael](#)"; "[Kelly Tucker](#)"; [Caitlin G. Coslett](#)
Subject: RE: In re Novartis and Par Antitrust Litig. (SDNY)
Date: Wednesday, September 25, 2019 11:06:00 AM

Katie,

Plaintiffs will not repeat the relevance of the documents. We explained the relevance of these documents many months ago, and Lupin and Novel have already agreed to produce the documents at issue—but have simply failed to produce the undisputedly relevant documents or, in some cases such as Lupin's regulatory correspondence, have made only a partial production. Plaintiffs have been patient, but can wait no longer for Lupin and Novel to produce the documents they have already agreed to produce.

Contrary to your contention that there is "no need" to file a motion to compel at this time, courts in this jurisdiction have granted a party's motion to compel due to another party's "continued non-compliance with [a] subpoena" for failure to produce documents. *See, e.g., Bulkmatic Transp. Co. v. Pappas*, No. 99-CIV-12070(RMB)(JCF), 2001 WL 504839, at *2 (S.D.N.Y. May 11, 2001). Moreover, Rule 37(a) treats an incomplete disclosure, answer, or response as a "failure to disclose, answer, or respond" and provides for a party's rights to file a motion to compel under those circumstances—and subsection (a)(5)(A) also provides that the court "must...require the party ... whose conduct necessitated the motion...to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). This court has also found that the failure to produce documents "in a timely fashion" resulting in a production delay of "over seven months" is "plainly sanctionable conduct." *Metro Found. Contractors, Inc. v. Arch Ins. Co.*, No. 09-CIV-6796(JGK), 2011 WL 70561, at *2 (S.D.N.Y. Jan. 6, 2011).

Plaintiffs have been exceedingly patient and generous in providing ample time for Lupin and Novel to complete their agreed-upon productions pursuant to Plaintiffs' subpoenas, which were served over nine months ago. Lupin and Novel have simply failed to comply with the subpoenas. In a good faith effort to avoid burdening the Court with a needless motion to compel Lupin and Novel to produce undisputedly relevant documents that Lupin and Novel have already agreed to produce, Plaintiffs will allow Lupin and Novel two more weeks to complete their agreed-upon productions. However, if Lupin and Novel do not complete their productions by October 9th, Plaintiffs will be forced to file a motion to compel and seek attorneys' fees and costs pursuant to Rule 37.

Thanks,
Dan

Dan Chiorean
Odom & Des Roches, LLC
2020 Poydras Center
650 Poydras Street
New Orleans, LA 70130
Email: dchiorean@odrlaw.com
Tel (504) 522-0077
Fax (504) 522-0078

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From: Glynn, Katie <KGlynn@lowenstein.com>
Sent: Monday, September 2, 2019 7:31 PM
To: Dan Chiorean <dchiorean@odrlaw.com>
Cc: Blad, Leiv <LBlad@lowenstein.com>; Jaramillo, Zarema <ZJaramillo@lowenstein.com>; 'Daniel

Litvin (dlitvin@garwingerstein.com)' <dlitvin@garwingerstein.com>; 'van der Meulen, Robin' <rvandermeulen@labaton.com>; 'Deborah Elman' <delman@gelaw.com>; Chris Letter <cletter@odrlaw.com>; 'Kristyn Fields' <kfields@faruqilaw.com>; 'David Raphael' <draphael@ssrllp.com>; 'Kelly Tucker' <ktucker@gelaw.com>; Caitlin G. Coslett <ccoslett@bm.net>
Subject: RE: In re Novartis and Par Antitrust Litig. (SDNY)

Dan,

Thus far, Lupin and Novel have been unable to locate additional responsive documents. They are continuing to conduct a reasonable search and, to the extent they identify additional responsive documents, those documents will be produced. We understand that fact discovery is ongoing and Plaintiffs' September 3 document production deadline is arbitrary. Given that Lupin is still searching for responsive documents, there is no need for Plaintiffs to file a motion to compel. Further, the documents produced so far show when the companies received FDA approval, when they began marketing generic Exforge, and how much generic Exforge they have sold since launch. Please explain what additional information belonging to these third-parties is necessary for Plaintiffs to continue litigating their antitrust case against Par and Novartis.

Thank you,
Katie

Katie R. Glynn
Associate
Lowenstein Sandler LLP

T: 202.753.3824
F: 202.753.3838

From: Dan Chiorean <dchiorean@odrlaw.com>
Sent: Thursday, August 22, 2019 11:50 AM
To: Glynn, Katie <KGlynn@lowenstein.com>
Cc: Blad, Leiv <LBlad@lowenstein.com>; Jaramillo, Zarema <ZJaramillo@lowenstein.com>; 'Daniel Litvin (dlitvin@garwingerstein.com)' <dlitvin@garwingerstein.com>; 'van der Meulen, Robin' <rvandermeulen@labaton.com>; 'Deborah Elman' <delman@gelaw.com>; Chris Letter <cletter@odrlaw.com>; 'Kristyn Fields' <kfields@faruqilaw.com>; 'David Raphael' <draphael@ssrllp.com>; 'Kelly Tucker' <ktucker@gelaw.com>; Caitlin G. Coslett <ccoslett@bm.net>
Subject: RE: In re Novartis and Par Antitrust Litig. (SDNY)

Good morning Katie,

Lupin and Novel's last productions were on August 5, 2019, over two weeks ago. Plaintiffs asked over 1.5 months ago that Lupin and Novel complete their productions by August 5, 2019, yet there are still multiple outstanding gaps in both productions, as outlined in my email on August 8 below. In other words, Lupin and Novel still have not produced all of the documents they agreed to produce, as set forth in your April 19, 2019 letter and our subsequent meet & confers.

Plaintiffs ask that Lupin and Novel both complete the *entirety* of their outstanding productions no

later than September 3, 2019. If we do not receive the documents by that date, or we receive another partial/incomplete production, Plaintiffs will be forced to move to compel.

Many thanks,
Dan

Dan Chiorean

Odom & Des Roches, LLC
2020 Poydras Center
650 Poydras Street
New Orleans, LA 70130
Email: dchiorean@odrlaw.com
Tel (504) 522-0077
Fax (504) 522-0078

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From: Dan Chiorean

Sent: Tuesday, August 13, 2019 5:19 PM

To: 'Glynn, Katie' <KGlynn@lowenstein.com>

Cc: 'Blad, Leiv' <LBlad@lowenstein.com>; 'Jaramillo, Zarema' <ZJaramillo@lowenstein.com>; 'Daniel Litvin' (dlitvin@garwingerstein.com)' <dlitvin@garwingerstein.com>; 'van der Meulen, Robin' <rvandermeulen@labaton.com>; 'Deborah Elman' <delman@gelaw.com>; Chris Letter <cletter@odrlaw.com>; 'Kristyn Fields' <kfields@faruqilaw.com>; 'David Raphael' <draphael@ssrllp.com>; 'Kelly Tucker' <ktucker@gelaw.com>; Caitlin G. Coslett (ccoslett@bm.net) <ccoslett@bm.net>

Subject: RE: In re Novartis and Par Antitrust Litig. (SDNY)

Katie,

In addition to the three questions in my email below, attached please find Plaintiffs' correspondence with questions regarding recently produced sales and chargeback data from Lupin and Novel.

Thanks,
DC

Dan Chiorean

Odom & Des Roches, LLC
2020 Poydras Center
650 Poydras Street
New Orleans, LA 70130
Email: dchiorean@odrlaw.com
Tel (504) 522-0077
Fax (504) 522-0078

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From: Dan Chiorean

Sent: Thursday, August 8, 2019 11:39 AM

To: Glynn, Katie <KGlynn@lowenstein.com>

Cc: Blad, Leiv <LBlad@lowenstein.com>; Jaramillo, Zarema <ZJaramillo@lowenstein.com>; 'Daniel Litvin' (<dlitvin@garwingerstein.com>) <dlitvin@garwingerstein.com>; 'van der Meulen, Robin' <rvandermeulen@labaton.com>; 'Deborah Elman' <delman@gelaw.com>; Chris Letter <cletter@odrlaw.com>; 'Kristyn Fields' <kfields@faruqilaw.com>; 'David Raphael' <draphael@ssrllp.com>; 'Kelly Tucker' <ktucker@gelaw.com>; Caitlin G. Coslett (<ccoslett@bm.net>) <ccoslett@bm.net>

Subject: RE: In re Novartis and Par Antitrust Litig. (SDNY)

Katie,

We have received and loaded your most recent production. We'll let you know if we have questions about these documents.

Additionally, we had requested that Lupin and Novel complete their productions by August 5, 2019. This production does not appear to be such a completion. At the very minimum, Plaintiffs are still missing:

1. Lupin's supplemental production of documents responsive to Request No. 3, i.e. Lupin's complete regulatory correspondence for ANDA No. 090245.
2. Lupin's production of documents responsive to Request No. 5.
3. Novel's production of documents responsive to Request Nos. 4 and 5

When can we expect to receive these documents?

Regards,
Dan

Dan Chiorean

Odom & Des Roches, LLC
2020 Poydras Center
650 Poydras Street
New Orleans, LA 70130
Email: dchiorean@odrlaw.com
Tel (504) 522-0077
Fax (504) 522-0078

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From: Glynn, Katie <KGlynn@lowenstein.com>

Sent: Monday, August 5, 2019 1:00 PM

To: Dan Chiorean <dchiorean@odrlaw.com>

Cc: Blad, Leiv <LBlad@lowenstein.com>; Jaramillo, Zarema <ZJaramillo@lowenstein.com>; 'Daniel Litvin' (<dlitvin@garwingerstein.com>) <dlitvin@garwingerstein.com>; 'van der Meulen, Robin' <rvandermeulen@labaton.com>; 'Deborah Elman' <delman@gelaw.com>; Chris Letter <cletter@odrlaw.com>; 'Kristyn Fields' <kfields@faruqilaw.com>; 'David Raphael' <draphael@ssrllp.com>; 'Kelly Tucker' <ktucker@gelaw.com>

Subject: In re Novartis and Par Antitrust Litig. (SDNY)

Counsel,

Please see the attached correspondence. The referenced Sharefile links are below, and the password will be sent via separate cover.

<https://lowensteinsandler.sharefile.com/d-saa3bc11c8df4d4b8>

<https://lowensteinsandler.sharefile.com/d-sb3f74af303845d19>

Thanks,
Katie

Katie R. Glynn
Associate
Lowenstein Sandler LLP

T: 202.753.3824
F: 202.753.3838



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